



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0554]

RIN 1625-AA11

Regulated Navigation Area; Sarah Mildred Long Bridge

Replacement, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The United States Coast Guard proposes to establish a regulated navigation area (RNA) on the navigable waters of the Piscataqua River under and surrounding the Sarah Mildred Long Bridge between Portsmouth, NH and Kittery, ME. This RNA would allow the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during bridge structural repair operations.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade Elizabeth V. Gunn, Waterways Management Division at Coast Guard Sector Northern New England, at (207) 347-5014 or e-mail at Elizabeth.V.Gunn@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
MEDOT	Maine Department of Transportation
NHDOT	New Hampshire Department of Transportation
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we

can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0554] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0554) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Requests must be received by the Coast Guard prior to the end of the comment period. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Maine Department of Transportation (MEDOT) applied for a bridge construction permit with the Coast Guard on August 15, 2013. The Coast Guard issued Public Notice 1-137 on February, 2014, which was published on the USCG Navigation Center website and the First Coast Guard District-Bridge Branch website, and solicited comments through March 12, 2014. Three comments were received in response to the public notice: one comment was a

statement of no objection and two comments were in favor of the project.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, construction crews, and the marine environment during bridge construction operations on the Piscataqua River between Portsmouth, NH and Kittery, ME.

D. Discussion of Proposed Rule

MEDOT intends to replace the existing vertical lift bridge over the Piscataqua River, which carries the U.S. Route 1 Bypass from Portsmouth, NH and Kittery, ME, with a hybrid vertical lift bridge on an upstream alignment. The project is necessary to replace a structurally and operationally deficient bridge that has exceeded its useful life. In the normal vehicle use mode, the new vertical lift bridge will provide a vertical clearance

through the main channel of 56 feet above mean high water (MHW) in the closed position and 135 feet above MHW in the open position, and a horizontal clearance of 250 feet measured normal to the axis of the channel. When closed to normal vehicle use (i.e., in rail use mode), the new bridge will provide a vertical clearance through the main channel of 16 feet MHW.

The construction of the new Sarah Mildred Long Bridge will involve large machinery and construction vessel operations above and in the navigable waters of the Piscataqua River. These operations, by their nature, are hazardous and pose risks both to recreational and commercial traffic as well as the construction crew. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA would limit vessel speed and wake of all vessels operating in the vicinity of the bridge construction zone. All vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain steerageway. This would be achieved by enforcing a five (5) knots speed limit and "NO WAKE" zone in the vicinity of the

construction as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA would also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard has discussed this project at length with the New Hampshire Department of Transportation (NHDOT) and Maine Department of Transportation (MEDOT) to identify if the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway.

All closures would be limited to specific hours of the day. Mariners would be advised of all closure dates and times via Local Notice to Mariners and Broadcast Notice to Mariners in advance of closure times.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be minimal because this regulated navigation area requires vessels to reduce speed through 600 yards of the Piscataqua River, therefore causing only a minimal delay to a vessel's transit. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and we expect to give advance notice of such closures. Advanced public notifications would be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will not have a significant impact on small entities, because the RNA would be of limited size and any waterway closure of short duration. Additionally before any effective period of waterway closure, advanced public notifications would be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying

with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of an RNA. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub.

L. 107-295, 116 Stat. 2064; Department of Homeland Security
Delegation No. 0170.1.

2. Add §165.T01-0554 to read as follows:

§165.T01-0554 Regulated Navigation Area; Sarah Mildred Long
Bridge Replacement, Portsmouth, NH

(a) Location. The following area is a Regulated
Navigation Area (RNA): All navigable waters of the Piscataqua
River between Portsmouth, NH and Kittery, ME, from surface to
bottom, within a 300 yard radius of position 43°05'10"N,
070°45'38"W, center point of the existing Sarah Mildred Long
Bridge.

(b) Regulations.

(1) The general regulations contained in 33 CFR 165.10,
165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into
or movement within this zone, during periods of enforcement, is
prohibited unless authorized by the Captain of the Port Sector
Northern New England (COTP).

(3) Persons and vessels may request permission to enter
the RNA during periods of enforcement by contacting the COTP or
the COTP's on-scene representative on VHF-16 or via phone at
207-767-0303.

(4) During periods of enforcement, a speed limit of five
(5) knots will be in effect within the regulated area and all

vessels must proceed through the area with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain steerageway.

(5) During periods of enforcement, vessels must comply with all directions given to them by the COTP or the COTP's on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; Maine State Police, Maine Marine Patrol or other designated craft; or may be on shore and communicating with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR §84 - Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) Enforcement Period. This regulation is enforceable 24 hours a day from 12:01 a.m. on November 1, 2014 until 11:59 p.m. on May 31, 2019.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(2) Violations of this RNA may be reported to the COTP at 207-767-0303 or on VHF-Channel 16.

Dated: August 8, 2014.

L. L. Fagan
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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